

## CERTAIN CUBAN EXPROPRIATION LOSSES

DECEMBER 14, 1970.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MILLS, from the Committee on Ways and Means,  
submitted the following

### REPORT

[To accompany H.R. 18693]

The Committee on Ways and Means, to whom was referred the bill (H.R. 18693) to amend section 165(i) of the Internal Revenue Code of 1954, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert:

That (a) section 165(i) of the Internal Revenue Code of 1954 (relating to certain property confiscated by the government of Cuba) is amended—

(1) by striking out “or (2)” in paragraph (1)(B);

(2) by striking out “on December 31, 1958” in the last sentence of paragraph (1) and inserting in lieu thereof the following: “on one or more days in the period beginning on December 31, 1958, and ending on May 16, 1959”;

(3) by amending paragraph (2)(B) to read as follows:

“(B) For purposes of subsection (a), the fair market value of property held by the taxpayer on one or more days during the period beginning on December 31, 1958, and ending on May 16, 1959, to which paragraph

(1) applies, on the day on which the loss of such property was sustained, shall be its fair market value on the first day in such period on which the property was held by the taxpayer.”; and

(4) by striking out paragraph (3) thereof.

(b) (1) The amendments made by subsection (a) of this section shall apply in respect of losses sustained in taxable years ending after December 31, 1958.

(2) Notwithstanding any law or rule of law, refund or credit of any overpayment attributable to the amendments made by subsection (a) may be made or allowed if claim thereof is filed after the date of the enactment of this Act and before July 1, 1971. No interest shall be allowed with respect to any such refund or credit for any period before January 1, 1972.

### I. SUMMARY

The bill amends the provisions of the tax laws relating to the deduction of Cuban expropriation losses of individuals to permit the carryback and carryover of losses of an individual resulting from the

Cuban expropriation of "investment property." Under present law, Cuban expropriation losses of an individual may generally be carried forward if they are attributable to property used in his "trade or business," or carried back and forward if they are attributable to property held by him for "personal use."

The bill also modifies the requirement under this provision of present law that the expropriated property must have been held by the taxpayer in Cuba on December 31, 1958. Under the modified requirement the property must have been held at some time during the period from December 31, 1958, through May 16, 1959. The modified requirement applies to personal-use property under present law, as well as to investment property under the bill. A trade or business expropriation loss, however, may be deducted when sustained without regard to these time limitations.

Claims for refund arising under the provisions of the bill may be filed between the date of enactment of the bill and July 1, 1971, even though they would otherwise be barred by the statute of limitations.

This bill is reported unanimously by your committee and the Treasury Department does not oppose its enactment.

## II. REASONS FOR BILL

Under present law (sec. 172), net operating losses may be carried back 3 years and carried forward 5 years to offset income of the taxpayer. Net operating losses arising from expropriation by a foreign government may not be carried back, but they may be carried forward 10 years. However, in the case of individuals, these provisions are fully applicable, in effect, only to losses incurred in the taxpayer's trade or business.

A special rule (sec. 165(i)) is provided for losses resulting from expropriation by the Cuban Government of property of an individual held for personal use, such as his residence. If the individual was a citizen or resident of the United States on December 31, 1958, any Cuban expropriation loss sustained before January 1, 1964, which was not a trade or business loss or an investment loss is treated as a casualty loss and therefore may be carried back 3 years and carried forward 5 years. (The special rule specifically provides that it may not be carried forward 10 years as a foreign expropriation loss.) If the property is tangible property, it must have been held by the taxpayer and located in Cuba on December 31, 1958.

An individual's losses on investment property (that is, property held for the production of income not in connection with a trade or business) may not be carried back or carried over under the regular net operating loss provision (sec. 172) except to the extent the individual has investment income. However, investment losses normally are capital losses, since they arise from the sale or exchange of capital assets, and as such they may be carried back or carried over under the capital loss carryback and carryover provisions (sec. 1212).

On the other hand, foreign expropriation losses of investment property are treated as ordinary losses and not as capital losses, since they are not considered as resulting from a sale or exchange. As a result, there is no carryback or carryover of such losses except to the extent the taxpayer has investment income.

The committee considers it anomalous that unused Cuban expropriation losses of business property and personal-use property may be carried to other taxable years (under sec. 172) but unused Cuban expropriation losses of investment property cannot. There appears to be no reason why, if carrybacks and carryovers are to be allowed for expropriation losses of personal-use property, that they should not be allowed for expropriation losses of investment property, a class of property more closely related to business property, with respect to which losses have traditionally been accorded carryback and carryover treatment.

The committee is also concerned with the situation of a taxpayer who acquired property after December 31, 1958, but before the Cuban Government initiated its widespread policy of expropriation. This problem applies both to personal-use property under present law and investment property under the bill. (A trade or business expropriation loss already is eligible for the 10-year expropriation loss carryover even if the property was acquired after December 31, 1958).

### III. EXPLANATION OF BILL

The bill generally provides that Cuban expropriation losses of individuals with respect to investment property are to be treated in the same way as Cuban expropriation losses of individuals with respect to personal use property under present law—that is, as casualty losses which may be carried back and carried over under the net operating loss provisions.

As in the case of expropriations of personal-use property, an investment property loss is to be treated as having been sustained on October 14, 1960, unless it is established that it was sustained on some other day, and the normal 3-year carryback and 5-year carryover rule is to apply (rather than the 10-year carryover rule applicable to foreign expropriation losses incurred in a trade or business).

The bill provides that for purposes of determining whether investment property qualifies for casualty loss treatment, the property must have been held by the taxpayer in Cuba on one or more days during the period beginning on December 31, 1958, and ending on May 16, 1959. The bill also changes the provision of present law, which requires personal-use property to be held by the taxpayer in Cuba on December 31, 1958, in order to qualify for casualty loss treatment. The amendment permits personal use property to qualify if it was held on one or more days during the period beginning on December 31, 1958, and ending on May 16, 1959. For example, if a taxpayer acquired a residence in Cuba in February 1959, he could qualify for casualty loss treatment with respect to a later expropriation of the residence.

For purposes of determining fair market value of personal-use property or investment property which receives casualty loss treatment, the bill provides that the fair market value is to be determined on the first day in the period beginning on December 31, 1958, and ending on May 16, 1959, on which the property was held by the taxpayer.

The bill also provides that, notwithstanding any law or rule of law, refund or credit of any overpayment attributable to the amendments made by the bill, may be made or allowed if a claim for refund or credit is filed after the date of enactment of the bill and before

January 1, 1971. This provision permits a taxpayer to file a claim for refund or credit for otherwise closed years (1) with respect to expropriated investment property, and (2) with respect to personal-use property acquired and held in Cuba after December 31, 1958, and on or before May 16, 1959, since casualty loss treatment is not available for expropriations of such property under present law. No interest is to be allowed on these refunds or credits for any period before January 1, 1972.

#### IV. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### SECTION 165 OF THE INTERNATIONAL REVENUE CODE OF 1954

##### SEC. 165. LOSSES.

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##### (i) CERTAIN PROPERTY CONFISCATED BY THE GOVERNMENT OF CUBA.—

(1) TREATMENT AS SUBSECTION (c)(3) LOSS.—For the purposes of this chapter in the case of an individual who was a citizen of the United States, or a resident alien, on December 31, 1958, any loss of property which—

(A) was sustained by reason of the expropriation, intervention, seizure, or similar taking of the property, before January 1, 1964, by the government of Cuba, any political subdivision thereof, or any agency or instrumentality of the foregoing, and

(B) was not a loss described in paragraph (1) **[or (2)]** of subsection (c), shall be treated as a loss to which paragraph (3) of subsection (c) applies. In the case of tangible property, the preceding sentence shall not apply unless the property was held by the taxpayer, and was located in Cuba, **[on December 31, 1958]** *on one or more days in the period beginning on December 31, 1958, and ending on May 16, 1959.*

##### (2) SPECIAL RULES.—

(A) For purposes of subsection (a), any loss described in paragraph (1) shall be treated as having been sustained on October 14, 1960, unless it is established that the loss was sustained on some other day.

(B) For purposes of subsection (a), the fair market value of property held by the taxpayer on **[December 31, 1958,** to which paragraph (1) applies, on the day on which the loss of such property was sustained, shall be its fair market value on December 31, 1958.] *one or more days during the period beginning on December 31, 1958, and ending on May 16, 1959,*



*to which paragraph (1) applies, on the day on which the loss of such property was sustained, shall be its fair market value on the first day in such period on which the property was held by the taxpayers.*

(C) For purposes of section 172, a loss described in paragraph (1) shall not be treated as an expropriation loss within the meaning of section 172(k).

(D) For purposes of section 6601, the amount of any tax imposed by this title shall not be reduced by virtue of this subsection for any period prior to February 26, 1964.

[(3) REFUNDS OR CREDITS.—Notwithstanding any law or rule of law, refund or credit of any overpayment attributable to the application of paragraph (1) may be made or allowed if claim therefor is filed before January 1, 1965. No interest shall be allowed with respect to any such refund or credit for any period prior to February 26, 1964.]

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